

**United States Department of Labor
Employees' Compensation Appeals Board**

R.O., Appellant

and

**U.S. POSTAL SERVICE, WEST GRAND POST
OFFICE, Oakland, CA, Employer**

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**Docket No. 20-0247
Issued: December 13, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 6, 2019 appellant filed a timely appeal from a July 10, 2019 merit decision and July 31, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish compensation for time lost from work to attend medical appointments on intermittent dates during the period August 28 through October 4, 2018 causally related to her accepted November 24, 2017

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 31, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

employment injuries; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim for intermittent disability during the period January 22 through 29, 2018, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On December 8, 2017 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 24, 2017 she injured her left leg and knee when she missed a step and fell down stairs while in the performance of duty. She stopped work on November 26, 2017. On February 2, 2018 OWCP accepted appellant's claim for contusions of the left knee and left lower leg, and sprain of the left knee. It paid her wage-loss compensation on the supplemental rolls commencing February 13, 2018.

In a January 16, 2018 primary treating physician's progress report, Dr. Sarah Ann Mansell, an attending Board-certified family practitioner, noted that she evaluated appellant on January 15, 2018. She also noted a date of injury as November 24, 2017 and that appellant was not currently working because her job was unable to accommodate her modifications. Dr. Mansell diagnosed left knee contusion and tendinitis of the left patellar tendon. She placed appellant on modified activity at work and home with restrictions from January 15 through 29, 2018.

On February 23, 2018 appellant filed a claim for compensation (Form CA-7) for disability from work during the period January 22 through 29, 2018. On the reverse side of the claim form, the employing establishment indicated that she had returned to modified-duty work following her accepted employment injuries.³ On an accompanying February 26, 2018 time analysis form (Form CA-7a), appellant claimed compensation due to "no work" on January 22, 23, 25, 26, 27, and 29, 2018.⁴

On March 9, 2018 the employing establishment verified that appellant was marked as absent without leave (AWOL) for the period January 22 through 29, 2018.

In a March 9, 2018 letter, OWCP informed appellant that the evidence submitted was insufficient to establish entitlement to compensation for the period January 22 through 29, 2018. It requested that she submit medical evidence from her physician explaining how her employment-related conditions worsened such that she was unable to perform her work duties during the claimed period. OWCP noted that the evidence of record did not establish that the employing establishment was unable to provide a light/limited-duty position within appellant's medical restrictions. It related that the employing establishment confirmed that she was placed on AWOL status during the claimed period. OWCP requested that appellant submit evidence to support why she was unable to work. It afforded her 30 days to submit the necessary evidence.

³ On January 30, 2018 appellant accepted a job offer as a full-time modified city carrier with the employing establishment at two hours per day.

⁴ Appellant also claimed 4.50 hours to attend a medical appointment on February 15, 2018. OWCP, in a March 9, 2018 letter, notified her that payment had been authorized for 4.50 hours of leave without pay (LWOP) taken on February 15, 2018.

On March 13, 2018 appellant informed OWCP that the employing establishment had corrected her status from AWOL to LWOP.

Dr. Mansell, in a January 29, 2018 progress note, related a history of the accepted November 24, 2017 employment injury. She reiterated her diagnoses of left knee contusion and tendinitis of the left patellar tendon. Dr. Mansell again placed appellant on modified activity at work and home from January 29 to February 15, 2018.

Additional progress notes dated January 15 and 18, 2018 from Dr. Roman P. Kownacki, a Board-certified occupational medicine physician, and Dr. W.J. Kevin Maher, a family practitioner, respectively, noted a history of the accepted November 24, 2017 employment injury. The physicians provided assessments of tendinitis of the left patellar tendon and left knee contusion, subsequent. Appellant was placed on modified activity at work and home from January 18 through 29, 2018.

OWCP, by decision dated July 18, 2018, denied appellant's claim for compensation for the period January 22 through 29, 2018. It found that the medical evidence of record was insufficient to establish a material change in her accepted employment-related conditions that rendered her unable to perform her light-duty work duties. OWCP also found that the evidence of record was insufficient to establish that the employing establishment was unable to provide appellant with a light/limited-duty assignment within her medical restrictions during the claimed period.

On September 18, 2018 the employing establishment offered appellant a part-time modified city carrier position effective that day based on the work restrictions set forth by Dr. Scott M. Taylor, an orthopedic surgeon. Appellant accepted the job offer on September 19, 2018.

In an October 4, 2018 visit note, Dr. Taylor related a history of the accepted November 24, 2017 employment injury. He diagnosed sprain of unspecified site of the left knee, subsequent encounter. Dr. Taylor advised that appellant should continue to perform modified work. He advised that she could return to regular work on December 1, 2018.

On October 16, 2018 appellant filed an additional Form CA-7 for time lost from work to attend medical appointments on intermittent dates during the period August 28 through October 4, 2018. In an accompanying October 17, 2018 Form CA-7a, she claimed compensation for LWOP taken on the following dates to attend medical appointments: 1.29 hours on August 28, 2018; 1.63 hours on August 29, 2018; 1.32 hours on September 24, 2018; and 1.53 hours on October 2, 2018.⁵

OWCP, in an October 22, 2018 development letter, informed appellant that it received her claim for compensation for intermittent time loss for medical appointments on August 28 and 29, September 24, and October 2, 2018. It requested that she submit additional medical evidence to

⁵ Appellant also claimed compensation for 4.51 hours of LWOP taken on September 20, 2018 and 2.48 hours on October 4, 2018, which was paid on October 22, 2018.

establish her attendance at a medical appointment on the claimed dates. OWCP afforded appellant 30 days to provide the requested information.

Thereafter, OWCP received additional medical evidence from Dr. Taylor. In a December 20, 2017 industrial work status report and November 6 and December 4, 2018 visit notes, Dr. Taylor reiterated his diagnoses of left knee contusion, subsequent, and left knee sprain, subsequent. He placed appellant on modified activity at work and home from December 20, 2017 to January 15, 2018 and again advised that she could return to regular work on December 1, 2018. In prescription notes dated November 6 and December 4, 2018, Dr. Taylor ordered physical therapy.

By decision dated July 10, 2019, OWCP denied appellant's claim for compensation for August 28 and 29, September 24, and October 2, 2018 finding that she had not submitted evidence to support medical evaluation or treatment for her accepted conditions on the claimed dates.

On July 24, 2019 appellant requested reconsideration of OWCP's July 18, 2018 decision. In an accompanying letter dated July 9, 2019, she contended that the employing establishment erred in placing her on AWOL status as she was willing and able to work during the period January 22 through 29, 2018 for which she requested wage-loss compensation. Appellant noted that she was given an "Employee Leave Information Letter, Complete Day" by the employing establishment and was told by management not to come to work and that she would be contacted when work was available. She indicated that a copy of that letter dated January 18, 2018 accompanied her request for reconsideration. Appellant also noted that she was attaching a March 29, 2019 settlement agreement of a grievance that she had filed against the employing establishment, which addressed the mistake it made in placing her on AWOL status. She concluded that OWCP was free to contact her union representative and manager.⁶ Additionally, appellant submitted March 13, 2018 Form CA-7a again claiming compensation for intermittent dates during the period January 22 through 29, 2018. She also submitted a copy of OWCP's July 18, 2018 decision.

OWCP received a September 11, 2018 prescription from Dr. Taylor who diagnosed sprain of unspecified site of the left knee, sequela for 3 to 10 months.

By decision dated July 31, 2019, OWCP denied appellant's request for reconsideration of its July 18, 2018 decision denying her disability claim for the period January 22 through 29, 2018, finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted that besides the uncertified CA-7 form and a copy of its July 18, 2018 decision she submitted in support of her untimely reconsideration request, no additional materials were received as part of the request despite her statement that they were being submitted as a part of her request.

⁶ The Board notes that the evidence that appellant references in her reconsideration request is not found in the case record.

LEGAL PRECEDENT -- ISSUE 1

OWCP's procedures provide that wages lost for compensable medical examinations or treatment may be reimbursed.⁷ A claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.⁸ Wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday and during a scheduled tour of duty. Wage-loss compensation for medical treatment received during off-duty hours is not reimbursable.⁹ The evidence should establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed in order for compensation to be payable.¹⁰ For a routine medical appointment, a maximum of four hours of compensation may be allowed. However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care. The claims for wage loss should be considered on a case-by-case basis.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish entitlement to wage-loss compensation for up to four hours of time lost for medical treatment on intermittent dates during the period August 28 through October 4, 2018 causally related to her accepted November 24, 2017 employment injuries.

Appellant alleged on an October 17, 2018 Form CA-7a that she was disabled from work on August 28 and 29, September 24, and October 2, 2018 due to medical appointments. The medical evidence of record, however, does not establish that she attended medical appointments on the claimed dates.¹² The Board therefore finds that the medical evidence of record is insufficient to establish appellant's claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

⁸ *Id.* at Chapter 2.901.19.a.

⁹ *Id.* at Chapter 2.901.19.a(2).

¹⁰ *Id.* at Chapter 2.901.19.a(3).

¹¹ *Id.* at Chapter 2.901.19.c.

¹² In order to establish entitlement to compensation for any time missed from work due to medical treatment for an employment-related condition, a claimant must submit supporting medical evidence. *S.H.*, Docket No. 18-1342 (issued February 26, 2019); *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

LEGAL PRECEDENT -- ISSUE 2

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹³ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).¹⁴ The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.¹⁵

OWCP may not deny a request for reconsideration solely because the request was untimely filed. When a request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether the request demonstrates clear evidence of error.¹⁶ OWCP's regulations and procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's request demonstrates clear evidence of error on the part of OWCP.¹⁷

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP. The evidence must be positive, precise, and explicit, and it must manifest on its face that OWCP committed an error.¹⁸ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁹ This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear evidence on the part of OWCP.²⁰ The Board makes an independent determination of whether a claimant has demonstrated merit review in the face of such evidence.²¹

OWCP's procedures further provide that the term clear evidence of error is intended to represent a difficult standard.²² The claimant must present evidence that on its fact shows that OWCP made an error. Evidence such as a detailed, well-rationalized medical report that, if

¹³ 20 C.F.R. § 10.607(a).

¹⁴ *Supra* note 7 at Chapter 2.1602.4 (February 2016).

¹⁵ *G.L.*, Docket No. 18-0852 (issued January 14, 2020).

¹⁶ 20 C.F.R. § 10.607(b); *R.S.*, Docket No. 19-0180 (issued December 5, 2019).

¹⁷ *Id.*; *supra* note 7 at Chapter 2.1602.5a (February 2016).

¹⁸ 20 C.F.R. § 10.607(b); *B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

¹⁹ *See G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

²⁰ *B.W.*, *supra* note 18.

²¹ *Id.*; *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

²² *Supra* note 17.

submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.²³

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations²⁴ and procedures²⁵ establish a one-year time limitation for requesting reconsideration, which begins on the date of the original OWCP merit decision. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.²⁶ Appellant requested reconsideration of the July 18, 2018 decision denying of her claim for wage-loss compensation for the period January 22 through 29, 2018. As appellant's request for reconsideration was not received by OWCP until July 24, 2019, more than one year after the July 18, 2018 merit decision, the Board finds that it was untimely filed.²⁷ Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in denying her claim for compensation.

The Board finds that appellant has not demonstrated clear evidence of error on the part of OWCP in its July 18, 2018 merit decision. With her July 24, 2019 untimely request for reconsideration, appellant indicated that she was submitting a January 18, 2018 letter from the employing establishment and a March 29, 2019 grievance settlement agreement. However, no such evidence was received.

On reconsideration, OWCP received a March 13, 2018 Form CA-7a wherein she again claimed compensation for intermittent dates during the period January 22 through 29, 2018. Appellant also submitted a duplicate copy of OWCP's July 18, 2018 decision. This evidence had previously been considered by OWCP and she did not explain how this evidence was positive, precise, and explicit in manifesting on its face that OWCP committed an error in denying her claim for compensation.²⁸ As the underlying issue is medical in nature, these documents are insufficient to shift the weight of the evidence.

²³ *G.B.*, *supra* note 19.

²⁴ *F.N.*, Docket No. 18-1543 (issued March 6, 2019); 20 C.F.R. § 10.607(a); *see Alberta Dukes*, 56 ECAB 247 (2005).

²⁵ *Supra* note 24; *see J.M.*, Docket No. 19-1842 (issued April 23, 2020); *L.A.*, Docket No. 19-0471 (issued October 29, 2019); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

²⁶ *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert F. Stone*, 57 ECAB 292 (2005).

²⁷ 20 C.F.R. § 10.607(b); *see J.M.*, *supra* note 25; *L.A.*, *supra* note 25; *Debra McDavid*, 57 ECAB 149 (2005).

²⁸ *J.F.*, Docket No. 14-1938 (issued February 6, 2015).

Appellant has not submitted any argument or evidence to demonstrate clear evidence of error in OWCP's July 18, 2018 decision. The Board, thus, finds that OWCP properly found that her request for reconsideration failed to demonstrate clear evidence of error.²⁹

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish compensation for time lost from work to attend medical appointments on intermittent dates during the period August 28 through October 4, 2018 causally related to her accepted November 24, 2017 employment injuries. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim for intermittent disability during the period January 22 through 29, 2018, finding that it was untimely filed and failed to demonstrate clear evidence of error.

²⁹ See *J.D.*, Docket No. 18-1765 (issued June 11, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 10 and 31, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 13, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board